

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Applications 18721,)
18723, 21636 and 21637 of UNITED)
STATES BUREAU OF RECLAMATION to)
Appropriate from the North Fork)
American River in Placer County)
_____)
_____)

ORDER CLARIFYING DECISION 1400

In order to clarify the meaning and intent of permit conditions 2 and 3 on page 23 of the order in Decision 1400, and to conform said conditions with the discussion on page 17 of the decision, said order is hereby amended as follows:

1. Revise condition 2 to read:

2. Flows shall be maintained in the entire reach of the American River from Nimbus Dam to the Sacramento River for maintenance of fish and wildlife of not less than 1,250 cfs from October 15 of each year to the succeeding July 14, and not less than 800 cfs from July 15 to October 14. Reductions below these ordered amounts may be made in the same proportions as deficiencies are imposed in project water delivered for irrigation within the Folsom South service area due to an inadequate project water supply, subject to the provisions of condition 4.

2. Revise condition 3 to read:

3. Flows shall be maintained in the entire reach of the American River from Nimbus Dam to the Sacramento River for recreational purposes of not less than 1,500 cfs from May 15 to October 14 of each year. The flows required by this condition and condition 2 are not cumulative. Flows required by this condition may be reduced or eliminated to the extent necessary to prevent imposition of deficiencies in project water delivered for irrigation within the Folsom South service area due to an inadequate project water supply, subject to the provisions of condition 4.

Adopted as the order of the State Water Resources
Control Board at a meeting duly called and held at Sacramento,
California.

Dated: May 4, 1972

W. W. ADAMS
W. W. Adams, Chairman

E. F. DIBBLE
E. F. Dibble, Vice Chairman

RONALD B. ROBIE
Ronald B. Robie, Member

ROY E. DODSON, JR.
Roy E. Dodson, Jr., Member

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Appropriate from the North Fork)
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_____)

ORDER DENYING RECONSIDERATION OF DECISION 1400

Five petitions for reconsideration and/or clarification of Decision 1400 have been filed. These petitions are on behalf of the following parties:

1. San Joaquin County Flood Control and Water Conservation District; North San Joaquin Water Conservation District; Central San Joaquin Water Conservation District; Stockton-East Water District, formerly Stockton and East San Joaquin Water Conservation District (San Joaquin County parties)
2. U. S. Bureau of Reclamation (USBR)
3. Omochumne-Hartnell Water District (OHWD)
4. Sacramento Municipal Utility District (SMUD)
5. East Bay Municipal Utility District (EBMUD)

The Board denies reconsideration and responds as follows to the items upon which reconsideration has been requested.

Contentions of the San Joaquin County Parties

1. Although the decision states that it relates only to Auburn Reservoir permits, the evidence clearly shows that the

effect of the order extends in substantial measures to water diverted and stored pursuant to permits issued for Folsom Reservoir.

The Order in Decision 1400 does not cover permits issued for Folsom Reservoir. The Order states that "Permits issued on Applications 18721, 18723, 21636 and 21637 be amended...". All of these numbered applications are for the Auburn-Folsom South Unit and not Folsom Reservoir. If correction is made for the lack of right to make consumptive use diversions upstream from Nimbus Dam in summer months, as discussed in the decision, USBR Exhibit 29A shows the flows which would occur in the lower American River under the USBR's rights for Folsom project with present restrictions and commitments and without an Auburn project. Decision 1400 requires that these flows be supplemented by sufficient releases at Nimbus Dam, to be supplied from concurrent flow at Auburn Dam, if available, or by releases from Auburn Reservoir storage if the direct flow is insufficient, to maintain the lower American River flows required by conditions 2, 3 and 4. However, to avoid interfering with USBR-integrated operation of its reservoirs, condition 5 also allows releases from storage other than Auburn Reservoir

to meet the requirements of the decision. Testimony at hearings preceding both Decision 1356 and Decision 1400 indicates that the USBR intends to operate the reservoirs as an integrated project. The full water conservation benefits from Auburn Reservoir include the increased potential for controlling and conserving the flow of South Fork American River in Folsom Reservoir. Thus releases from storage in Folsom Reservoir in lieu of required releases from Auburn Reservoir may occur as a result of Bureau-integrated operation of Folsom and Auburn Reservoirs to obtain these benefits. This merely represents an option which is available to the applicant, rather than by a requirement imposed by the decision.

2. The Board failed to give priority to the domestic and irrigation uses of the Folsom South Canal service area as required by law.

This ground is based upon Water Code Section 1254. However, many other sections are involved. The use of water for recreation and preservation and enhancement of fish and wildlife are beneficial uses (Sec. 1243) and the amounts of water

needed to remain in the source for protection of beneficial uses are to be taken into account (Secs. 1243, 1243.5). The Board is to consider the relative benefit to be derived from all beneficial uses (Sec. 1257) and to make its decisions in the public interest (Secs. 1253 and 1257).

3. Decision 1400 fails to protect the environment of eastern San Joaquin County and the Stockton metropolitan area by not providing urgently needed supplemental water and fails to allow to the Folsom South Canal service area that supplemental water needed immediately to sustain its fully developed, agriculturally oriented economy.

Water to the service area can be provided only by physical facilities and a contract with USBR for water supply through those facilities. The fact that users in that area failed to contract with USBR during a long period of years prior to Decision 1400 suggests that the need is less urgent than the petition indicates. It is a fact that the first reach of the canal is already being built, but the remainder of the canal will not be constructed until contracts for water supply are negotiated. In any event, the evidence indicates that many years will

elapse prior to full use of water under upstream rights and existing project contracts, so that interim supplies are available to adequately supply any urgent needs until a Hood-Clay connection or other recovery plant can be planned and constructed. Decision 1400 will be, and is intended to be, a factor which both the USBR and potential contractors for water service need to consider in making plans and arriving at contracts.

4. The Board did not take into account the historical development and proposed use of American River water for Folsom South Canal service area. The San Joaquin County parties will now be compelled to look elsewhere for a water source, which would be contrary to historical and present planning and direction including that from the Board and its predecessors in Decisions 858, 893 and 1356 and would be contrary to the intent of federal authorizing legislation.

The proposed use of American River water was considered by the Board and is discussed in Decision 1400. The decision does not force the San Joaquin County parties to look elsewhere for a water source, although it may result in planning to include rediversion for at least part of their American River supplies from a different location than Folsom

South Canal and through other facilities such as a Hood-Clay connection. Decision 858 in July 1956 by the former State Engineer included in its findings a statement that additional sources of supply for North San Joaquin Water Conservation District and EBMUD would be available from the Folsom South Canal or the Feather River Project and other sources. The decision pointed out that water to the North San Joaquin Water Conservation District could be made available by pumping from Delta channels into canals of Woodbridge Irrigation District. As stated in the response to item 1 of this petition, allocations made in Decision 893 approving USBR permits for Folsom project are not conditioned by Decision 1400. The Board believes the intent of Federal authorizing legislation to be that water rights for the Auburn-Folsom South project are subject to decisions made by the Board pursuant to State law governing appropriation of water including the reservation of jurisdiction in Decision 1356 and Decision 1400.

5. Through Decision 1400 the Board has thwarted consummation of the diligent and continuing efforts made by the

San Joaquin County parties to obtain American River water.

The response to item 3 of this petition is also applicable to this item.

6. The decision is deficient because it does not discuss several aspects of the upstream hydroelectric developments of SMUD and Placer County Water Agency (PCWA) including regulation of power releases in Auburn and Folsom Reservoirs. The petitioners imply in their assertion that USBR by contract has acquired rights for diversion to Folsom South service area of storage releases from upstream hydroelectric projects of SMUD and PCWA even though diversion during those times is denied in the Bureau's permits.

The permits granted to SMUD, PCWA and City of Sacramento (assignee for consumptive use purposes of the water right applications of SMUD) do not include as part of their diversion facilities or place of use, the projects of USBR. An appropriator of water who collects water to storage does not acquire ownership of the water but only the right to use it. Water appropriated under the Board's jurisdiction, once used for the purpose for which appropriated and returned to a stream, is again subject to the Board's jurisdiction, and cannot be sold or contracted for use at a place not approved by the Board and made part of

the water right concerned. USBR Exhibits 29 and 29A show that USBR, in its water rights studies, has not assumed availability to its project of upstream power releases at times outside the diversion season allowed in its permits. Alterations of time of occurrence of the power releases would not affect the quantity of storage releases required from Auburn Reservoir under Decision 1400 unless the releases were shifted to the winter or spring seasons. The possibility that the power operations would require depletion of storage during the seasons of greatest stream-flow is too remote to warrant consideration. The increasing consumptive use by PCWA was considered in the decision in accordance with the allocation between PCWA rights and USBR project water in the contract between USBR and PCWA, and as shown in the USBR Exhibit 29B.

7. To encourage implementation of the only reasonable solution to the problem of minimum flows in the American River, a permit term is proposed.

The proposed term is not in accord with the Board's intent as expressed in Decision 1400. The term proposed would destroy the effect of

Decision 1400 since it would limit the releases at Nimbus Dam to the quantity of water conserved by Auburn Reservoir not to exceed the increment of safe yield added to the Central Valley Project by operation of the reservoir. The term does not make allowance for the fact that most of the flow required under Decision 1400 will be furnished by direct flows and not by releases from storage.

Contentions of the U. S. Bureau of Reclamation

1. The Board exceeded its alleged reservation of jurisdiction in that compliance with terms and conditions in Decision 1400 would require use of water conserved in Folsom Reservoir, which water was the subject of permits granted in Decision 893 over which the Board did not retain jurisdiction and which were not the subject of this hearing.

The response to item 1 of the petition of the San Joaquin County parties is applicable to this item as well.

2. The Board exceeded its alleged reservation of jurisdiction in that compliance with the terms and conditions in Decision 1400 would require release of stored water from Auburn and Folsom Reservoirs.

The statutory power of the Board to condition permits to require reasonable releases from storage so as to best develop, conserve and

utilize in the public interest the water sought to be appropriated was discussed in Decision 1379. The Board is satisfied that Decision 1400 is in accord with those conclusions.

3. The Board did not correctly consider the impact of the decision on the water uses for which Congress authorized the facilities.

The Board fully considered this matter in arriving at its decision.

4. The Board erred in its analysis and determination of "Additional Nimbus release under present U.S.B.R. commitments and restrictions" as set forth on Plate 1 attached to the decision.

The allegation contains no specifics as to the extent or nature of the supposed error. In any event, Plate 1 is attached to the decision for illustrative purposes. Variation in the details thereof would not affect the bases for the findings and order of Decision 1400.

5. Operation of the Auburn Reservoir facilities in the manner prescribed by Decision 1400 would be contrary to the optimum use of the reservoir requiring carry-over storage as was provided for in the plan presented to and approved by Congress.

The Board believes that the flows required by Decision 1400 are not contrary to optimum use of Auburn Reservoir, and that those flows provide for and promote a high degree of multiple use of water resources.

6. The Board in its decision is making an allocation of water from a federally authorized, funded, and constructed project, which allocation is solely within the province of Congress or its delegated agent.

The findings and order of Decision 1400 are in accord with the intent of Congress that water rights for the Auburn-Folsom South project be acquired in accordance with State law.

7. The decision is not supported by the evidence and is contrary to State and Federal law.

The evidence fully supports the findings and order of the decision. The decision is in accord with the applicable statutes of the State of California and the legislation authorizing the Auburn-Folsom South Canal project.

Contentions of Omochumne-Hartnell Water District

The petition of OHWD merely adopted the objections of USBR and is therefore not considered separately.

Contentions of Sacramento Municipal Utility District

1. If no contracts providing for the delivery of project water for irrigation are entered into, it might be argued that conditions 2 and 3 preclude reductions of either fish and wildlife or recreation flows under any circumstances, even if the maintenance of such flows would require drastic reductions in deliveries under the SMUD contract. The District suggests that condition 2 be clarified by the addition of the following sentence: "If no deliveries of project water are being made for irrigation, reductions below these ordered amounts may be made to the extent necessary to prevent the imposition of deficiencies in project water delivered under contracts entered into prior to the date of this order."

The situation for which the District expresses concern can exist only upon the occurrence of all four of the following conditions: (1) no contracts for project water for irrigation use in Folsom South service area; (2) high level of development of water deliveries from American River, both above and below Nimbus Dam; (3) no Hood-Clay connection; and (4) a dry cycle of severity of that of 1928-1934.

There is no indication in the record of any probability that the entire 875,000 afa which the USBR assumes to be the firm supply diverted to the Folsom South service area would be used for municipal and industrial purposes.

The simultaneous occurrence of the other three conditions is also unlikely. Therefore, a revision of the wording of conditions 2 and 3 appears unnecessary. In any event, the reservation of jurisdiction contained in the order allows for future revision of conditions 2 and 3, if necessary.

2. The District suggests deletion of the words "for irrigation" in condition 3 of the order, because it might be argued that the present wording of the condition precludes reduction of recreation flows to prevent the imposition of deficiencies in project water delivered for purposes other than irrigation, and, therefore, that even if contracts for the delivery of irrigation water are entered into, neither irrigation nor recreation flows may be reduced until municipal deliveries have been eliminated.

The District's concern is unwarranted. It is not the intent of Decision 1400 to interfere with the contractual arrangements between USBR and contractors for delivery of project water. SMUD's contract with USBR

requires that in a year in which there is a shortage in the quantity of water available to customers of the Central Valley Project, the quantities supplied to municipal and industrial users shall not be reduced until the reduction assigned to agricultural water users amounts to 25 percent of the agricultural contractual commitments for that year.

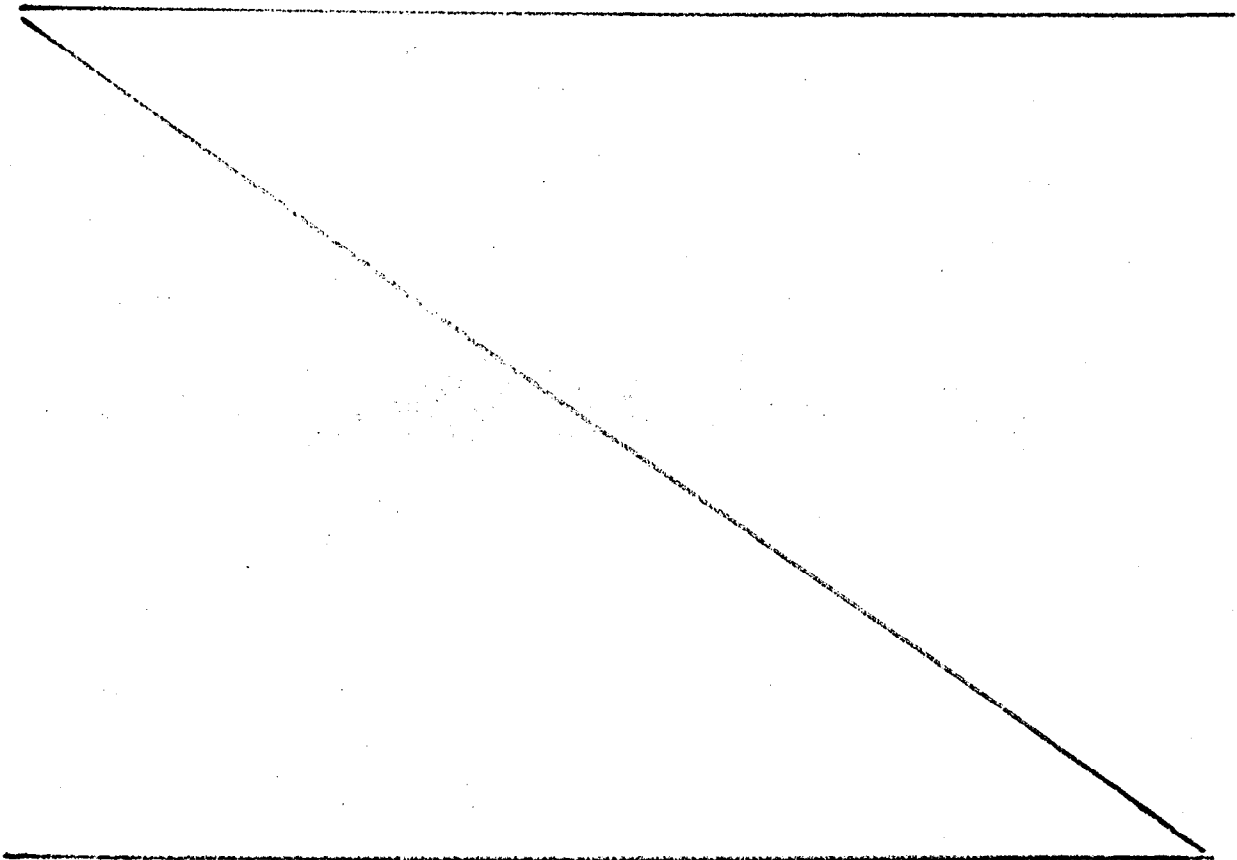
Contentions of East Bay Municipal Utility District

Implicit in the elimination of conditions 2 and 3 after the construction of a Hood-Clay connection is the assumption that critical dry year requirements between Nimbus and Cosumnes River can be met under the reduced release requirements of Decision 1400. In order to avoid confusion concerning the ability of the Bureau of Reclamation to contract for water supplies on the Nimbus-Cosumnes reach of the canal, the Board is urged to add the following to condition 4: "...; provided, however, that reductions may be made to the extent necessary to prevent the imposition of deficiencies in project water delivered from that portion of the Folsom-South Canal which cannot be supplied through a Hood-Clay connection."

Condition 4 of Decision 1400 modifies but does not and is not intended to eliminate the provisions of conditions 2 and 3.

Decision 1400 does not affect the status

of East Bay Municipal Utility District in relation to other contractors for project water supply as set forth in its contract with USBR. The decision is not intended to prevent sharing of deficiencies in times of shortage of project water supply in accordance with their contracts by contractors for project water whose delivery points are upstream on Folsom South Canal from its junction with a Hood-Clay connection.



Adopted as the order of the State Water Resources
Control Board at a meeting duly called and held at San Diego,
California.

Dated: June 1, 1972

W. W. ADAMS
W. W. Adams, Chairman

E. F. DIBBLE
E. F. Dibble, Vice Chairman

RONALD B. ROBIE
Ronald B. Robie, Member

ROY E. DODSON
Roy E. Dodson, Member

MRS. CARL H. (JEAN) AUER
Mrs. Carl H. (Jean) Auer, Member